

STATE WATER RESOURCES CONTROL BOARD (SWRCB)
WATER QUALITY ORDER 03-XX-DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. _____

WASTE DISCHARGE REQUIRMENTS (WDRS)
FOR
STORM WATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (GENERAL PERMIT)

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January 8, March 19, 2003

FACT SHEET
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BACKGROUND

In 1972, the ~~Federal~~federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]) was amended to provide that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with a ~~National Pollutant Discharge Elimination System (NPDES)~~NPDES permit. The 1987 amendments to ~~the~~ CWA added section §402(p), which established a framework for regulating storm water discharges under the NPDES Program. Subsequently, in 1990, the ~~United States~~U.S. Environmental Protection Agency (U.S. EPA) promulgated regulations for permitting storm water discharges from industrial sites (including construction sites that disturb five acres or more) and from municipal separate storm sewer systems (MS4s) serving a population of 100,000 people or more. These regulations, known as the Phase I regulations, require operators of medium and large MS4s to obtain storm water permits. On December 8, 1999, U.S. EPA promulgated regulations, known as Phase II, requiring permits for storm water discharges from Small MS4s and from construction sites disturbing between ~~4~~one and ~~5~~five acres of land. This General Permit regulates storm water discharges from Small MS4s.

An “MS4” is a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) designed or used for collecting or conveying storm water; (ii) which is not a combined sewer; and (iii) which is not part of a Publicly Owned Treatment Works (POTW). [See, Title 40, Code of Federal Regulations (40 CFR) §122.26(b)(8).]

A “Small MS4” is an MS4 that is not permitted under the municipal Phase I regulations, and which is “owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity....” (40 CFR ~~§122.26(b)(16)~~§122.26(b)(16)). Small MS4s *include systems similar to separate storm sewer systems in municipalities, such as systems at military bases,*

large hospital or prison complexes, and highways and other thoroughfares, but do not include separate storm sewers in very discrete areas, such as individual buildings. This permit refers to MS4s that operate throughout a community as “traditional MS4s” and MS4s that are [similar to traditional MS4s but operated asat](#) a separate campus or facility as “non-traditional MS4s”-MS4s.”

Federal regulations allow two permitting options for storm water discharges (individual permits and general permits). ~~The~~ SWRCB elected to adopt a statewide general permit for Small MS4s in order to efficiently regulate numerous storm water discharges under a single permit. In certain situations a storm water discharge may be more appropriately and effectively regulated by an individual permit, a region-specific general permit, or by inclusion in an existing Phase I permit. In these situations, the Regional Water Quality Control Board (RWQCB) Executive Officer~~(EO)~~ will direct the Small MS4 operator to submit the appropriate application, in lieu of a Notice of Intent ~~(NOI)~~ to comply with the terms of this General Permit. In these situations, the individual or regional permits will govern, rather than this General Permit.

NINTH CIRCUIT COURT RULING

On January 14, 2003, the Ninth Circuit Court issued its decision in *Environmental Defense Center v. EPA*. This ruling upheld the Phase II regulations on all but three of the 20 issues contested. In summary, the court determined that applications for general permit coverage (including the NOI and Storm Water Management Program [SWMP]) must be made available to the public, the applications must be reviewed and determined to meet the Maximum Extent Practicable standard by the permitting authority before coverage commences, and there must be a process to accommodate public hearings. This General Permit is consistent with the ruling. Should the ruling be revised or vacated in the future, SWRCB may modify the General Permit.

ENTITIES SUBJECT TO THIS GENERAL PERMIT

This General Permit regulates discharges of storm water from “regulated Small MS4s.” A “regulated Small MS4” is defined as a Small MS4 that discharges to a water of the [U.S. United States \(U.S.\)](#) or to another MS4 regulated by an NPDES permit, and which is designated in one of the following ways:

1. Automatically designated by U.S. EPA pursuant to 40 CFR ~~§122.32(a)(1)~~[section 122.32\(a\)\(1\)](#) because it is located within an urbanized area defined by the Bureau of the Census (see Attachment 1); or
2. Traditional Small MS4s that serve cities, counties, and unincorporated areas that are designated by~~the~~ SWRCB or RWQCB after consideration of the following factors:
 - a. High population density – High population density means an area with greater than 1,000 residents per square mile. Also to be considered in this definition is a high density created by a non-residential population, such as tourists or commuters.

- b. High growth or growth potential – If an area grew by more than ~~25%~~25 percent between 1990 and 2000, it is a high growth area. If an area anticipates a growth rate of more than ~~25%~~25 percent over a 10-year period ending prior to the end of the first permit term, it has high growth potential.
- c. Significant contributor of pollutants to an interconnected permitted MS4 – A ~~small~~Small MS4 is interconnected with a separately permitted MS4 ~~if~~ storm water that has entered the Small MS4 is allowed to flow directly into a permitted MS4. In general, if the Small MS4 discharges more than ~~40%~~10 percent of its storm water to the permitted MS4, or its discharge makes up more than ~~40%~~10 percent of the other permitted MS4's total storm water volume, it is a significant contributor of pollutants to the permitted MS4. In specific cases, the MS4s involved or third parties may show that the ~~40%~~10 percent threshold is inappropriate for the MS4 in question.
- d. Discharge to sensitive water bodies – Sensitive water bodies are receiving waters, which are a priority to protect. They include the following:
- those listed as providing or known to provide habitat for threatened or endangered species;
 - those used for recreation that are subject to beach closings or health warnings; or
 - those listed as impaired pursuant to CWA ~~§303(d)~~section 303(d) due to constituents of concern in urban runoff (these include ~~BOD~~biochemical oxygen demand [BOD], sediment, pathogens, petroleum hydrocarbons, heavy metals, floatables, polycyclic aromatic hydrocarbons (~~PAHs~~),[PAHs], trash, and other constituents that are found in the MS4 discharge).

Additional criteria to qualify as a sensitive water body may exist and may be determined by ~~the~~ SWRCB or RWQCB on a case-by-case basis.

- e. Significant contributor of pollutants to waters of the ~~United States~~ Specific U.S. – Specific conditions presented by the MS4 may lead to significant pollutant loading to waters of the U.S. that are otherwise unregulated or inadequately regulated. An example of such a condition may be the presence of a large transportation industry.

These factors are to be considered when evaluating whether a Small MS4 should be regulated pursuant to this General Permit. An MS4 and the population that it serves need not meet all of the factors to be designated. ~~The State Board designated~~SWRCB designates a number of Small MS4s according to these ~~criteria. (See, Attachment 2.)~~criteria through this General Permit (see Attachment 2).

3. Non-traditional MS4s that are similar to traditional MS4s in municipalities, and Small MS4s may also be designated to seek permit coverage. These include non-traditional MS4s that are located within or discharge to a storm water permitted MS4 or which are designated by the State Board or a Regional Board and those that pose significant water quality threats. In general, these are storm water systems serving public campuses (including universities, community colleges, primary schools, and other publicly owned learning institutions with campuses), military bases, and prison and hospital complexes within or adjacent to other regulated MS4s. The State Board designated a number of these MS4s, or which pose significant water quality threats. SWRCB considered designating non-traditional Small MS4s when adopting this General Permit. However, the Environmental Defense Center ruling requires that SWRCB and RWQCBs change their procedures for implementing this General Permit. In compliance with that decision, each NOI and SWMP must be reviewed and approved, and in some cases considered in a public hearing, prior to the Small MS4 obtaining coverage under the General Permit. Therefore, SWRCB is delaying making these designations and the General Permit does not designate any non-traditional MS4s. (See, A list of non-traditional MS4s that are anticipated to be designated at a future date is included in Attachment 3.)
3 of this General Permit. These or other non-traditional MS4s may be designated by SWRCB or RWQCB at any time subsequent to the adoption of this General Permit.

The criteria selected to designate Small MS4s to be regulated are based on the potential to impact water quality due to conditions influencing discharges into their system or due to where they discharge. Some of the definitions provide “cut-off numbers.” Although there is no regulatory standard that mandates which numbers to use, dividing lines must be established in order to effectively use them as criteria.

Specifically, the high growth factor uses 25%25 percent growth over ten years. The average growth (based on county data from the Census) in California between 1990 and 2000 was 15.8%15.8 percent. The standard deviation was 9.9. Growth rates outside one standard deviation are more than 25.7%25.7 percent. The standard deviation is generally an indication of the spread of data. In defining the high growth factor, the standard deviation was used because it sets the limits within which most areas of California fall. County data was used because it was consistently available, whereas 1990 populations for several of the cities and places were not readily available. Additionally, county data gives a broader picture of the growth dynamics in California. Because the data is not normally distributed, 68%68 percent of the data points do not necessarily fall within one standard deviation of the mean. It does, however, provide a number in which to compare city and place growth rates to the average growth rate of California. The number was rounded to 25%25 percent for ease of application and with the understanding that it is an approximation.

The significant contributor of pollutants to an interconnected permitted MS4 definition uses a volume value of 10%10 percent, with the assumption that storm water contains pollutants. This is meant to capture flows that may affect water quality or the permit compliance status of another MS4, but exclude incidental flows between communities.

~~Discharges from non-traditional Small MS4s operated by other governmental entities (e.g., facilities owned and operated by the federal or state government or special district) may not fall under the jurisdiction of the city or county and therefore may need to be regulated separately. Similar facilities operated privately are not subject to this General Permit because, by definition, only public entities operate Small MS4s.~~

APPLICATION REQUIREMENTS

~~Regulated Small MS4s, automatically designated because they are within an urbanized area (Attachment 1), must submit to the appropriate RWQCB by March 10, 2003, a Notice of Intent to comply with the terms of this General Permit (NOI) (Attachment 6), a Storm Water Management Program (SWMP) and an appropriate fee.~~

~~July 29, 2003 a complete application package. A complete package includes an NOI (Attachment 7), a SWMP (one hard copy and one electronic copy in Word or PDF format). Regulated Small MS4s that are traditional MS4s designated by the SWRCB or RWQCB, including those designated in Attachment 2, must submit to the appropriate RWQCB, within 180 days of notification of designation, an NOI (Attachment 6) to comply with the terms of this General Permit, a SWMP, and an appropriate fee.~~

~~Regulated Small MS4s that are non-traditional MS4s designated by the SWRCB or RWQCB, including those designated in Attachment 3 must submit to the appropriate RWQCB, within 365 days of notification of designation, an NOI (Attachment 6) to comply with the terms of this General Permit, a SWMP, and an appropriate fee (if applicable) and an appropriate fee.~~

~~The July 29, 2003 deadline is an administrative deadline to comply with the General Permit. Section 122.33(c)(1) of 40 CFR required automatically designated Small MS4s to submit an application by March 10, 2003. Those applications received from Small MS4s that submitted applications to comply with the federal deadline will be considered as an application to meet the requirements of this General Permit. If the application package is deemed complete by the RWQCB staff, it will be posted on the internet and made available to the public subsequent to permit adoption.~~

~~Regulated Small MS4s relying entirely on Separate Implementing Entities that are also permitted to implement their entire storm water programs are not required to submit a SWMP, but must submit the NOI and an appropriate fee (if applicable).~~

~~that are traditional MS4s designated by the SWRCB or RWQCB must submit to the appropriate RWQCB, within 180 days of notification of designation (or at a later date stated by SWRCB or RWQCB), an NOI (Attachment 7), a SWMP (one hard copy and one electronic copy in Word or PDF format), and an appropriate fee. Those traditional MS4s identified in Attachment 2 of this General Permit are being notified of their designation by SWRCB upon adoption of this General Permit. They must, therefore, submit their NOI and SWMP by October 27, 2003.~~

~~Regulated Small MS4s that are non-traditional MS4s designated by SWRCB or RWQCB, including those in Attachment 3, must submit to the appropriate RWQCB, within 180 days of notification of designation (or at a later date stated by SWRCB or RWQCB), an NOI~~

(Attachment 7), a SWMP (one hard copy and one electronic copy in Word or PDF format), and an appropriate fee.

Regulated Small MS4s relying entirely on Separate Implementing Entities (SIEs) that are also permitted, to implement their entire storm water programs are not required to submit a SWMP if the SIE being relied on has an approved SWMP. Proof of SWMP approval, such as a copy of the RWQCB letter, must be submitted to the RWQCB by the applying Small MS4, along with the NOI and an appropriate fee.

Regulated Small MS4s that fail to obtain coverage under this General Permit or another NPDES permit for storm water discharges will be in violation of the CWA and the Porter-Cologne Water Quality Control Act.

A regulated Small MS4 is considered to be permitted once the NOI and SWMP has been received by the RWQCB. The MS4 shall begin implementing its SWMP immediately, but full implementation is not required until the end of the term of this General Permit. The RWQCB EO may require refinement upon review of the SWMP if it appears to be an inadequate tool to achieve compliance with this General Permit. The Permittee may also revise its own SWMP, but must propose such changes to the RWQCB. Receipt of applications deemed complete by RWQCB staff will be acknowledged on SWRCB's website at <http://www.swrcb.ca.gov/stormwtr/index.html> for 30 days. During this 30-day public review period, a member of the public may request that a public hearing be held by RWQCB. If no hearing is requested, the RWQCB Executive Officer may approve SWMP. Small MS4s do not obtain permit coverage until SWMP is approved.

Attachment 78 lists RWQCB contact information for questions and submittals.

GENERAL PERMIT REQUIREMENTS

Prohibitions

This General Permit effectively prohibits the discharge of materials other than storm water that are not “authorized non-storm water discharges” (see General Permit § D.2.c) or authorized by a separate NPDES permit. This General Permit also incorporates discharge prohibitions contained in Statewide Water Quality Control Plans and Regional Water Quality Control Plans ~~(basin plans)~~ (Basin Plans).

Effluent Limitations

Permittees must implement Best Management Practices (BMPs) that reduce pollutants in storm water runoff to the technology-based standard of Maximum Extent Practicable (MEP) to protect

water quality. In accordance with 40 CFR ~~§122.44(k)(2)~~, section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits.

Discharges shall not contain reportable quantities of hazardous substance as established at 40 CFR ~~§117.3 or 40 CFR §302.4~~, section 117.3 or 40 CFR section 302.4.

Preparation of ~~the Storm Water Management Plan (SWMP)~~ SWMP

This General Permit requires regulated Small MS4s to:

1. Develop and implement a SWMP that describes BMPs, measurable goals, and timetables for implementation in the following six program areas (Minimum Control Measures):

Public Education

The Permittee must educate the public in its permitted jurisdiction about the importance of the storm water program and the public's role in the program.

Public Participation

The Permittee must comply with all ~~state~~ State and local notice requirements when implementing a public involvement/participation program.

Illicit Discharge Detection and Elimination

The Permittee must adopt and enforce ordinances or take equivalent measures that prohibit illicit discharges. The Permittee must also implement a program to detect illicit discharges.

Construction Site Storm Water Runoff Control

The Permittee must develop a program to control the discharge of pollutants from construction sites greater than or equal to one acre in size within its permitted jurisdiction. The program must include inspections of construction sites and enforcement actions against violators.

Post Construction Storm Water Management

The Permittee must require long-term post-construction BMPs that protect water quality and control runoff flow, to be incorporated into development and significant redevelopment projects.

For non-traditional MS4s that seek coverage under this Permit, it is not expected that implementation of this control measure will require redesign of projects under active construction at the time this General Permit is adopted or for school facilities that have been submitted to the Department of General Services, Division of the State Architect before adoption of the permit, and which receive final approval from the Department of Education by December 31, 2004. ~~The~~ SWMP must, however, specify

how the control measure will be implemented ~~over the term of this Permit~~ within five years of designation.

Pollution Prevention/Good Housekeeping for Municipal Operations

The Permittee must examine its own activities and develop a program to prevent the discharge of pollutants from these activities. At a minimum, the program must educate staff on pollution prevention, and minimize pollutant sources.

2. Reduce its discharge of pollutants to the MEP.
3. Annually report on the progress of SWMP implementation.

Development and Implementation of ~~the Storm Water Management Program (SWMP)~~ SWMP

~~The~~ SWMP must describe how pollutants in storm water runoff will be controlled and describe ~~the~~ BMPs that address the six Minimum Control Measures. Each BMP must have accompanying measurable goals that will be achieved during the permit term, or within five years of designation if designated subsequent to permit adoption, as a means of determining program compliance and accomplishments; and as an indicator of potential program effectiveness. The measurable goals should be definable tasks such as number of outreach presentations to make, number of radio spots to purchase, or percentage of pollutant loading to reduce (other examples of measurable goals can be found on U.S. EPA's web-site at <http://cfpub.epa.gov/npdes/stormwater/measurablegoals/index.cfm>). This approach provides the flexibility to target an MS4's problem areas while working within the existing organization.

~~The Permittee has until the expiration of this permit to fully implement its program, but it is expected that progress be made throughout the permit term. It is not anticipated that the SWMP submitted with the NOI will be fully developed and implemented. Rather, in many instances, what is submitted with the NOI will be a plan to be fully implemented upon submittal with the NOI. It is the intent of this General Permit that SWMPs submitted with the NOI contain sufficient information such that RWQCB staff and interested parties understand the BMPs that will be implemented or will be developed and implemented over the course of the General Permit term or, for Small MS4s designated subsequent to permit adoption, over a five-year period from designation. It is also expected that SWMPs will protect water quality, contain measurable goals and schedules, and assign responsible parties for each BMP. It is anticipated that the SWMP initially submitted may be revised or modified based on review of RWQCB staff or on comments provided by interested parties in accordance with Provisions G and H.19 of the General Permit.~~

~~to develop and fully implement the SWMP.~~ For example, it may be proposed that a ~~final SWMP will be submitted at~~ storm water logo be developed (or an existing one modified) by the end of the first ~~year, year~~; an ordinance prohibiting non-storm water discharges be adopted by the end of the second year; a survey of non-storm water discharges throughout the city be completed by the end of the second year; a brochure targeting the restaurant community regarding proper practices

to eliminate non-storm water discharges be developed or obtained by the end of the fourth year; and the brochure be distributed to ~~25%~~25 percent of the restaurants within the city during health department inspections by the end of the fifth year. (This example mentions only one activity each year. In fact, numerous activities will occur throughout the permit term that ensure that a SWMP addressing all ~~6~~six Minimum Control Measures is implemented by the end of the permit ~~term~~term (or within five years of designation for Small MS4s designated subsequent to adoption of the Permit.))

The main goal of this ~~permit~~General Permit is to protect water quality from the impacts of storm water runoff from Small MS4s. The intent is that storm water quality impacts will be considered in all aspects of a municipality's activities and that multiple departments within the municipality will work together to implement storm water BMPs. For instance, the planning department may work with the public works department when considering projects and their potential storm water impacts. Also, the health department can work with public works in a complementary manner to spread a consistent message about illicit discharges.

Many of the activities that a municipality already does can be recognized as a benefit to storm water or can be modified to add a storm water quality twist. A critical element of SWMP development is an assessment of activities already being conducted. For example, many communities already have a household hazardous waste program, which can be assumed to reduce illicit discharges to the MS4. Likewise, they examine potential flooding impacts of new development. This process can be modified to also examine water quality impacts as well as quantity.

Similarly, the Minimum Control Measures emphasize working with the public to prevent pollution during their everyday activities as well as to gain support for program funding. The MS4 has the flexibility to target specific segments of its residential or employee population in ways that are most appropriate for that particular segment. Taken together, the suite of public education approaches an MS4 takes can create a robust multimedia campaign that has a single message, which is threaded throughout the community through implementation of BMPs in the six program areas.

For links to information on how to implement each of the Minimum Control Measures, including sample ordinances that address the respective Minimum Control Measures, please see SWRCB's internet site at <http://www.swrcb.ca.gov/stormwtr/municipal.html>. Additionally, in accordance with 40 CFR ~~§122.34(d)(2)~~section 122.34(d)(2), SWRCB provides U.S. EPA's menu of BMPs to consider when developing a SWMP. This menu is available on U.S. EPA's internet site at http://cfpub1.epa.gov/npdes/stormwater/swphase2.cfm?program_id=6. The menu provides examples of BMPs and associated measurable ~~goals~~goals; however, other BMPs and measurable goals may be used.

~~Maximum Extent Practicable (MEP)~~MEP

MEP is the technology-based standard established by Congress in CWA ~~§402(p)(3)(B)(iii)~~section 402(p)(3)(B)(iii) that municipal dischargers of storm water must meet. Technology-based standards establish the level of pollutant reductions that dischargers must achieve. MEP is generally a result of emphasizing pollution prevention and source control BMPs as the first lines of defense in combination with structural and treatment methods where appropriate serving as additional lines of defense. The MEP approach is an ever evolving, flexible, and advancing concept, which considers technical and economic feasibility. As knowledge about controlling urban runoff continues to evolve, so does that which constitutes MEP. The individual and collective activities elucidated in the MS4's SWMP become its proposal for reducing or eliminating pollutants in storm water to the MEP. The way in which MEP is met may vary between communities.

The MEP standard applies to all regulated MS4s, including those in Phase I and Small MS4s regulated by this General Permit. Consistent with U.S. EPA guidance, the MEP standard in California is applied so that a first-round storm water permit requires BMPs that will be expanded or better-tailored in subsequent permits. In choosing BMPs, the major focus is on technical feasibility, but cost, effectiveness, and public acceptance are also relevant. If a ~~permittee~~Permittee chooses only the most inexpensive BMPs, it is likely that MEP has not been met. If a ~~permittee~~Permittee employs all applicable BMPs except those that are not technically feasible in the locality, or whose cost exceeds any benefit to be derived, it would meet the MEP standard. MEP requires ~~permittees~~Permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs are not technically feasible, or the cost is prohibitive. (See, State Board Order No. 2000-11.) (See SWRCB Order WQ 2000-11, <http://www.swrcb.ca.gov/resdec/wqorders/2000/00wqo.html>.)

Generally, in order to meet MEP, communities that have greater water quality impacts must put forth a greater level of effort. Alternatively, for similar water quality conditions, communities should put forth an equivalent level of effort. However, because larger communities have greater resources (both financial resources as well as existing related programs that can help in implementing storm water quality programs), it may appear that they have more robust storm water programs. Additionally, because storm water programs are locally driven and local conditions vary, some BMPs may be more effective in one community than in another. A community that has a high growth rate would derive more benefit on focusing on construction and post-construction programs than on an illicit connection program because illicit connections are more prevalent in older communities.

In accordance with the Ninth Circuit Court ruling, prior to obtaining permit coverage, SWMPs will be evaluated and approved by the RWQCB Executive Officer or, if requested, considered for approval in a public hearing conducted by RWQCB.

Many Phase I MS4s have been permitted under storm water regulations for more than ten years and have had that time to develop programs intended to reduce pollutants in their storm water discharge to the MEP. It is understood that storm water quality programs and regulations are new to the entities that will be regulated under this General Permit. Therefore, it is anticipated that this ~~permit~~General Permit term will serve as a "ramping-up" period and that programs

implemented by Phase II communities will not necessarily conform ~~with~~to programs implemented by Phase I communities. Despite this understanding, however, many of the lessons learned and information developed by Phase I communities is available to smaller communities as a guide and may be used by Phase II communities.

Supplemental Provisions for Larger and ~~Fast-Growing~~Fast Growing Regulated Small MS4s

By the expiration date of this ~~permit~~General Permit, traditional and non-traditional Small MS4s ~~located in areas with~~serving a population of ~~more than~~ 50,000 people or more, or that are subject to high growth, must require specific design standards as part of their post-construction program (as outlined in Attachment 4 of this General Permit), and they must comply with water quality standards through implementing better-tailored BMPs in an iterative ~~manner~~process. These more stringent requirements are applied to communities that are ~~larger, and therefore~~larger and, therefore, capable of a more extensive storm water program, and to communities that are fast growing, and therefore may have greater impacts on storm water runoff associated with construction and the loss of pervious ~~lands~~lands. Small MS4s designated subsequent to permit adoption have five years from designation to achieve compliance with the Supplemental Provisions. Attachment 5 provides a list of communities that SWRCB anticipates being subject to the provisions in Attachment 4.

Receiving Water Limitations

Attachment 4 establishes receiving water limitations that apply to larger and fast-growing regulated Small MS4s that are required to comply with Supplemental Provisions of this General Permit. The receiving water limitation language provided in this General Permit is identical to the language established in SWRCB Water Quality Order WQ-99-05 adopted by SWRCB on June 17, 1999. As interpreted in SWRCB Water Quality Order WQ-2001-15, adopted by SWRCB on November 15, 2001, the receiving water limitations in this General Permit do not require strict compliance with water quality standards. SWRCB language requires that SWMPs be designed to achieve compliance with water quality standards over time, through an iterative approach requiring improved BMPs. Because the storm water management plans may be implemented throughout a five-year period, regulated Small MS4s are not required to comply with the receiving water limitations iterative process until their plans are fully implemented.

Reporting Requirements

The Permittee must track and assess its program to ensure BMP effectiveness and must conform to other monitoring requirements that may be imposed by ~~the~~ RWQCB.

The Permittee is required to submit annual reports to the appropriate RWQCB by September 15th of each year ~~(first~~for Small MS4s designated with the adoption of this permit, the first annual report is to be submitted in 2004), or as otherwise required by the RWQCB ~~EO~~Executive Officer. Among other things, the Permittee shall evaluate its compliance with permit conditions, evaluate and assess the effectiveness of its BMPs, summarize the results of

any monitoring performed, summarize the activities planned for the next reporting cycle, and, if necessary, propose changes to [the](#) SWMP.

Monitoring

Inspections, as a form of visual monitoring, are important to a storm water program. Inspections of storm water runoff and infrastructure (such as drop inlets, basins, and gutters) can say a lot about the effectiveness and needs of a storm water program. Through inspections, non-storm water discharges can be discovered and subsequently stopped, maintenance needs can be identified, and visual pollutants and erosion problems can be detected. Inspections of facilities are also important for public education and outreach, to ensure proper BMP implementation and maintenance, and to detect non-storm water discharges. Additionally, chemical monitoring can be used to involve the public through citizen monitoring groups, detect pollutants, identify and target pollutants of concern, illustrate water quality improvements and permit compliance, and participate in total maximum daily load ([TMDL](#)) development and implementation.

Monitoring environmental indicators through bio-assessments or other less technical methods may also be a key component of a program. Although it may be more challenging, it is also very valuable because it is the “final product,” not just for a storm water program but for the broader environmental health of a community.

More specifically, the objectives of a monitoring program may include:

- Assessing compliance with this General Permit;
- Measuring and improving the effectiveness of [the](#) SWMP;
- Assessing the chemical, physical, and biological impacts [on](#) receiving waters resulting from urban runoff;
- Characterizing storm water discharges;
- Identifying sources of pollutants; and
- Assessing the overall health and evaluating long-term trends in receiving water quality.

While only inspections of construction sites, as part of the Construction Site Storm Water Runoff Control Minimum Control Measure, are specifically required, as elucidated above, other monitoring tasks may be appropriate in a storm water program. Also, the RWQCB can require additional monitoring.

Termination of Coverage

A Permittee may terminate coverage if: [a](#) new operator has assumed responsibility for the regulated Small [MS4](#); [the](#) Permittee has ceased operation of its [MS4](#); or all discharge of runoff from the Small MS4 has been eliminated. To terminate coverage, the Permittee must submit to [the](#) RWQCB a written request for permit termination.

Reliance on a ~~Separate Implementing Entity (SIE)~~ SIE

A Permittee ~~can~~may rely on a separate entity to implement one or more of the six Minimum Control Measures, if the separate entity can appropriately and adequately address the storm water issues of the Permittee. To do this, both entities must agree to the arrangement, and the Permittee must comply with the applicable parts of the SIE's program. The arrangement is subject to the approval of the RWQCB ~~EO~~Executive Officer.

In accordance with ~~§122.35(a)(3)~~section 122.35(a)(3), the Permittee remains responsible for compliance with its permit obligations if ~~the~~ SIE fails to implement the control measure(s) (or component thereof). Therefore, the entities are encouraged to enter into a legally binding agreement to minimize any uncertainty about compliance with the permit.

If the Permittee relies on an SIE to implement all six Minimum Control Measures and ~~the~~ SIE also has a storm water permit, the Permittee relying on ~~the~~ SIE must still submit an NOI, appropriate ~~fee (if applicable), fee, proof that SIE's SWMP has been approved by RWQCB or its staff,~~ and certification of the arrangement. However, the Permittee is not required to develop or submit a SWMP or annual reports, unless requested to do so by the RWQCB ~~EO~~Executive Officer. The arrangement is subject to the approval of the RWQCB ~~EO~~Executive Officer.

School districts present an example of where an SIE arrangement may be appropriate, either by forming an agreement with a city or with an umbrella agency, such as the County Office of Education. Because schools provide a large audience for storm water education, as part of the agreement, the two entities may coordinate an education program. An individual school or a school district may agree to provide a one-hour slot for all the second and fifth grade classes during which the city would bring in its own storm water presentation. Alternatively, the school could agree to teach a lesson in conjunction with an outdoor education science project, which may also incorporate a public involvement component. Additionally, the school and the city or Office of Education may arrange to have the school's maintenance staff attend the other entity's training sessions.

~~Discharges from Offsite Facilities~~

~~Some regulated Small MS4s have offsite facilities that discharge storm water. An offsite facility is a geographically non-adjacent or discontinuous site that serves, or is secondary to, the primary facility and has the same owner as the primary facility. Storm water discharges from an offsite facility must be permitted if it meets the definition of a regulated Small MS4 itself. However, the offsite facility may satisfy this permitting requirement if the SWMP of the primary facility addresses the offsite facility, such that the permitted area of the primary facility includes the offsite area.~~

~~A facility is not considered offsite if it operates independently of the other facility. In this case, two separate NOIs must be submitted, if they both meet the definition of a regulated Small MS4.~~

Non-traditional MS4 Facilities

~~Non-traditional Small MS4s possess a number of characteristics that set them apart from their municipal counterparts. These unique characteristics might lead these MS4 operators to question either the need to implement the entire suite of Minimum Control Measures or their ability to comply fully with their Phase II storm water permit. In meeting the six Minimum Control Measures, a facility's employee, student, or visitor population may serve as "the public" to target for outreach and involvement, and the facility may use policies in lieu of ordinances. Responsibility for developing a storm water program that comprises the Minimum Control Measures lies with the operator of the non-traditional Small MS4.~~

Retention of Records

The Permittee is required to retain records of all monitoring information and copies of all reports required by this General Permit for a period of at least five years from the date generated. This period may be extended by request of ~~the~~ SWRCB or RWQCB.

Role of ~~the~~ RWQCBs

~~The~~ RWQCBs and their staff will review and decide whether to approve SWMPs and, where requested, conduct public hearings on NOIs and SWMPs. Upon approval, they will notify Permittees that they have obtained permit coverage. They will also oversee implementation and compliance with this General Permit. As appropriate, they will review ~~SWMPs and~~ reports, require modification to SWMPs and other submissions, impose region-specific monitoring requirements, conduct inspections, take enforcement actions against violators of this General Permit, and make additional designations of regulated Small MS4s pursuant to this General Permit. They may also issue individual permits to regulated Small MS4s, and alternative general permits to categories of regulated Small MS4s. Upon issuance of such permits by an RWQCB, this General Permit shall no longer regulate the affected Small ~~MS4(s).~~ MS4s.

The Permittee and RWQCB are encouraged to work together to accomplish the goals of the storm water program. Specifically, they can coordinate the oversight of construction and industrial sites. For example, Permittees are required to implement a construction program. This program must include procedures for construction site inspection and enforcement. Construction sites disturbing an acre of land or more are also subject to inspections by ~~the~~ RWQCB under the Statewide General Permit for ~~the Discharge~~ Discharges of Storm Water Associated with Construction ~~Activities.~~ Activity. U.S. EPA intended to provide a structure that requires permitting through the federal Clean Water Act ~~CWA~~ while at the same time achieving local oversight of construction projects. A structured plan review process and field enforcement at the local level, which is also required by this General Permit, were cited in the preamble to the Phase II regulations as the most effective components of a construction program.

Similarly, as part of the illicit discharge detection and elimination program, the Permittee may inspect facilities that are permitted by the Statewide General Permit for ~~the Discharge~~ Discharges of Storm Water Associated with Industrial Activity and subject to RWQCB inspections.

The Small MS4 and ~~the~~ RWQCB are encouraged to coordinate efforts and use each of their enforcement tools in the most effective manner. For instance, the Small MS4 may identify a construction site operator that is not in compliance with the local requirements and the Construction General Permit. The Small MS4 may establish a fee for re-inspection if a site is out of compliance. If education efforts and the inspection fee fail to bring the site into compliance, the Small MS4 may contact ~~the~~ RWQCB and arrange a dual inspection and start enforcement procedures under the ~~Clean Water Act~~ CWA if compliance is not achieved.

Relationship Between the Small MS4 Permit and the General Permit for ~~the~~ DischargeDischarges of Storm Water Associated with Industrial ActivitiesActivity (Industrial Permit)

Some MS4 operators may also have facilities that are subject to the Industrial Permit. While the intent of both of these permits is to reduce pollutants in storm water, neither permit's requirements totally encompass the other. This General Permit requires that MS4 operators address six Minimum Control Measures, while the Industrial Permit requires the development and implementation of a Storm Water Pollution Prevention Plans (SWPPP) for certain "industrial" activities as well as requiring specific visual and chemical monitoring. In the Preamble to the Phase II regulations, U.S. EPA notes that for a combination permit to be acceptable, it must contain all of the requirements for each permit. Further, "when viewed in its entirety, a combination permit, which by necessity would need to contain all elements of otherwise separate industrial and MS4 permit requirements, and require NOI information for each separate industrial activity, may have few advantages when compared to obtaining separate MS4 and industrial general permit coverage."

Where the permits do overlap, one program may reference the other. More specifically, the Good Housekeeping for Municipal Operations Minimum Control Measure requires evaluation of municipal operations, some of which may be covered under the Industrial Permit. The development and implementation of ~~the~~ SWPPP under the Industrial Permit will likely satisfy the Good Housekeeping requirements for those industrial activities. ~~The~~ SWMP may incorporate by reference the appropriate SWPPP.

There may be instances where a non-traditional MS4 has, under the Industrial Permit, obtained coverage for the entire facility (rather than only those areas where industrial activities occur); and has developed a SWPPP that addresses the six Minimum Control Measures required by this General Permit. In these instances, the ~~non-non~~ traditional Small MS4 is not required to obtain coverage under this ~~permit~~ General Permit. The entity should, in such cases, provide to the appropriate RWQCB documentation that its SWPPP addresses the six Minimum Control Measures.

STATE WATER RESOURCES CONTROL BOARD (SWRCB)
WATER QUALITY ORDER NO. 03 - XX - DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS00000X

WASTE DISCHARGE REQUIREMENTS (WDRs)
FOR
STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM
SEWER SYSTEMS (MS4s) (GENERAL PERMIT)

The SWRCB finds that:

1. Urban runoff is a leading cause of pollution throughout California.
2. Pollutants of concern found in urban runoff include sediments, non-sediment solids, nutrients, pathogens, oxygen-demanding substances, petroleum hydrocarbons, heavy metals, floatables, polycyclic aromatic hydrocarbons (PAHs), trash, and pesticides and herbicides.
3. During urban development, two important changes occur. First, where no urban development has previously occurred, natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing a very effective purification process. Because pavement and concrete can neither absorb water nor remove pollutants, the natural purification characteristics of the land are lost. Second, urban development creates new ~~pollution~~ pollutant sources as human population density increases and brings with it proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage, pesticides, household hazardous wastes, pet wastes, trash, etc., which can be washed into the MS4. As a result of these two changes, the runoff leaving a developed urban area may be significantly greater in volume, velocity, and/or pollutant load than pre-development runoff from the same area.
4. A higher percentage of impervious area correlates to a greater pollutant loading, resulting in turbid water, nutrient enrichment, bacterial contamination, organic matter loads, toxic compounds, temperature increases, and increases of trash or debris.
5. Pollutants present in storm water can have damaging effects on both human health and aquatic ecosystems. In addition, the increased flows and volumes of storm water discharged from impervious surfaces resulting from development can significantly impact beneficial uses of aquatic ecosystems due to physical modifications of watercourses, such as bank erosion and widening of channels.

6. When water quality impacts are considered during the planning stages of a project, new development and many redevelopment projects can more efficiently incorporate measures to protect water quality.
7. On December 8, 1999, [EPAthe U.S. Environmental Protection Agency \(EPA\)](#) promulgated regulations under authority of the Clean Water Act (CWA) [§402\(p\)\(6\).section 402\(p\)\(6\)](#). These regulations require[the](#) SWRCB to issue NPDES storm water permits to operators of small municipal separate storm sewer systems (Small MS4s).

~~8. A municipality discharging storm water that has the potential to impact receiving water or another MS4 with a municipal storm water permit must be permitted to hold that municipality responsible for reducing pollutants in the runoff and mitigating the impact.~~

~~9. Of the Small MS4s defined by federal regulations, only “regulated Small MS4s” must obtain a permit. Title 40 of the Code of Federal Regulations (40 CFR) [§122.32\(a\)section 122.32\(a\)](#) describes regulated Small MS4s as those traditional Small MS4s located within an urbanized area as determined by the latest Decennial Census by the Bureau of the Census([Attachment 1](#)) and other Small MS4s that are designated by the permitting authority in accordance with designation criteria [in Findings 10 and 11 below](#). Traditional Small MS4s within urbanized areas (Attachment 1) are automatically designated and are not subject to the designation ~~process discussed below.~~~~

~~8. [criteria provided in Finding 10.](#)~~

~~10-9. [40 CFR §123.35\(b\) requires theSection 123.35\(b\) of 40 CFR requires](#) SWRCB to develop a process, as well as criteria, to designate Small MS4s as regulated Small MS4s.~~

10. In developing the designation criteria, factors were chosen to include parameters that may affect water quality. The following criteria will be considered in designating Small MS4s operated within a city or county as regulated Small MS4s.
 - a. High population density – High population density means an area with greater than 1,000 residents per square mile. Also to be considered in this definition is a high density created by a non-residential population, such as tourists or commuters.
 - b. High growth or growth potential – If an area grew by more than ~~25%~~[25 percent](#) between 1990 and 2000, it is a high growth area. If an area anticipates a growth rate of more than ~~25%~~[25 percent](#) over a 10-year period ending prior to the end of the first permit term, it has high growth potential.
 - c. Significant contributor of pollutants to an interconnected permitted MS4 – A Small MS4 is interconnected with a separately permitted MS4 if storm water that has entered the Small MS4 is allowed to flow directly into a permitted MS4. In general, if the Small MS4 discharges more than ~~10%~~[10 percent](#) of its storm water to the permitted MS4, or its discharge makes up more than ~~10%~~[10 percent](#) of the other

permitted MS4's total storm water volume, it is a significant contributor of pollutants to the permitted MS4. In specific cases, the MS4s involved or third parties may show that the

~~10%~~10 percent threshold is inappropriate for the MS4 in question.

d. Discharge to sensitive water bodies – Sensitive water bodies are receiving waters, which are a priority to protect. They include the following:

- those listed as providing or known to provide habitat for threatened or endangered species;
- those used for recreation that are subject to beach closings or health warnings; or
- those listed as impaired pursuant to Clean Water Act Section CWA section 303(d) due to constituents of concern in urban runoff (these include biological/biochemical oxygen demand (BOD), sediment, pathogens, oil and grease, and other constituents that are found in the MS4 discharge).

Additional criteria to qualify as a sensitive water body may exist and may be used by ~~the~~ SWRCB or RWQCB on a case-by-case basis.

e. Significant contributor of pollutants to waters of the United States (U.S.) – Specific conditions presented by the MS4 may lead to significant pollutant loading to waters of the U.S. that are otherwise unregulated or inadequately regulated. An example of such a condition may be the presence of a large transportation industry.

This General Permit serves as notice to those Small MS4s on Attachment 2 that they are designated as regulated Small MS4s~~Attachment 2 lists the cities and counties designated as regulated Small MS4s~~ by the SWRCB at the time of permit adoption.

~~12.11.~~ Section 122.26(b)(16)(iii) of 40 CFR defines systems that are similar to separate storm sewer systems in cities and counties, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares as Small MS4s. In this General Permit these types of Small MS4s are referred to as non-traditional MS4s that may be designated as regulated Small MS4s and required to seek coverage under this General Permit or coverage under a separate permit. Non-traditional MS4s with facilities with multiple structures often operate storm sewers that are similar to traditional MS4s operated by a traditional MS4 operated by a city or county cities or counties and discharge the same types of pollutants that are typically associated with urban runoff discharged through city and county MS4s.

~~13.12.~~ The SWRCB designates non-traditional MS4s that have storm sewer systems similar to traditional MS4s operated by a city or county and discharge into a permitted MS4 as a regulated Small MS4. In general, these facilities are public campuses (including universities, community colleges, primary schools, and other publicly owned learning institutions with campuses), military bases, and prison and hospital complexes. Attachment 3 lists non-traditional MS4 facilities that This permit does not designate any non-traditional MS4s.

SWRCB or RWQCB may designate non-traditional MS4s at any time subsequent to the adoption of this General Permit. Non-traditional MS4s that may be designated at a future date include, but are not limited to, those listed in Attachment 3 of this General Permit.

13. Non-traditional Small MS4 entities that are designated, but whose entire facilities are subject to the NPDES General Permit for the Discharge of Storm Water Associated with Industrial Activities and whose Storm Water Pollution Prevention Plan (SWPPP) addresses all six Minimum Control Measures described in this General Permit, are not required to obtain coverage under this General Permit. Such entities must present documentation to the appropriate RWQCB, showing that they meet the requirements for exclusion from coverage.
14. This General Permit requires regulated Small MS4s (Permittees) to develop a Storm Water Management Program (SWMP) designed to reduce the discharge of pollutants to the Maximum Extent Practicable (MEP) and to protect water quality. Upon approval of SWMP by the Regional Water Quality Control Board (RWQCB) or its Executive Officer, the Permittees obtain coverage under this General Permit. This General Permit requires implementation of SWMP.
15. SWMP will be available for public review and comment and may be subject to a public hearing if requested prior to approval.
16. Permittees can satisfy the requirements through effective implementation of a SWMP, which must contain Best Management Practices (BMPs) that address six Minimum Control Measures. SWMP must incorporate measurable goals and time schedules of implementation.
17. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. As knowledge about controlling urban runoff continues to evolve, so does that which constitutes MEP. Reducing the discharge of storm water pollutants to MEP in order to protect beneficial uses requires review and improvement, which includes seeking new opportunities. To do this, the Permittee must conduct and document evaluation and assessment of each relevant element of its program and revise activities, control measures, BMPs, and measurable goals, as necessary to meet MEP.
18. This General Permit includes Supplemental Provisions that apply to traditional and non-traditional Small MS4s serving a population of 50,000 people or more, or that are subject to high growth. These requirements address post-construction requirements and compliance with water quality standards. These Supplemental Provisions are similar to requirements for Medium and Large MS4s (Phase I), and are appropriate because larger Small MS4s are able to have more robust storm water programs and fast-growing Small MS4s may cause greater impacts to water quality.
19. The Receiving Water Limitations language contained in Attachment 4 is identical to the language established in SWRCB Water Quality Order WQ-99-05 adopted by the SWRCB

on June 17, 1999. As interpreted in SWRCB Water Quality Order WQ-2001-15, adopted by the SWRCB on November 15, 2001, the receiving water limitations in this General Permit do not require strict compliance with water quality standards.

20. The post-construction requirements, or Design Standards, contained in Attachment 4 are consistent with Order WQ-2000-11 adopted by SWRCB on October 5, 2000.
21. The purpose of the annual performance review is to evaluate (1) SWMP's effectiveness; (2) the implementation of SWMP (3) status of measurable goals; (4) effectiveness of BMPs; and (5) improvement opportunities to achieve MEP.
22. To apply for permit coverage authorizing storm water discharges to surface waters pursuant to this General Permit, the Permittees must submit a complete application package to the appropriate RWQCB. An application package includes a Notice of Intent (NOI) to comply with the terms of this General Permit, appropriate fee (in accordance with the most recent fee schedule¹), and SWMP. Permittees relying entirely on separately permitted Separate Implementing Entities (SIEs) to implement their entire programs are not required to submit a SWMP if the SIE being relied on has an approved SWMP. Attachment 8 gives contact information for each RWQCB.
23. Upon receipt of a complete permit application, the application will be public noticed for thirty days on SWRCB's website. During the public notice period, a member of the public may request that a public hearing be conducted by RWQCB. If no public hearing is requested, the application may be approved by the RWQCB Executive Officer. Permittees obtain coverage under the General Permit only after the SWMP has been approved.
24. Each Permittee is individually responsible for adoption and enforcement of ordinances and/or policies, implementation of identified control measures/BMPs needed to prevent or reduce pollutants in storm water, and for allocation of funds for the capital, operation and maintenance, and enforcement expenditures necessary to implement and enforce such control measures/BMPs within its jurisdiction. Enforcement actions concerning this General Permit will be pursued only against the individual Permittee responsible for specific violations of this General Permit.
25. In accordance with 40 CFR section 122.28(b)(3), a RWQCB may issue an individual MS4 NPDES Permit to a Permittee otherwise subject to this General Permit, or adopt an alternative general permit that covers storm water discharges regulated by this General Permit. The applicability of this General Permit is automatically terminated on the effective date of the individual permit or the date of approval for coverage under the alternative general permit.

¹ [California Code of Regulations. Title 23. Division 3. Chapter 9 Waste Discharge Reports and Requirements. Article 1 Fees.](#)

26. Certain BMPs implemented or required by Permittees for urban runoff management may create a habitat for vectors (e.g., mosquitoes and rodents) if not properly designed or maintained. Close collaboration and cooperative effort between the Permittees, local vector control agencies, RWQCB staff, and the State Department of Health Services is necessary to identify and implement appropriate vector control measures that minimize potential nuisances and public health impacts resulting from vector breeding.
27. This General Permit may be reopened and modified if the decision in *Environmental Defense Center v. EPA* is revised or vacated.
28. This NPDES Permit is consistent with the antidegradation policies of 40 CFR section 131.12, SWRCB Resolution 68-16, and RWQCBs' individual Basin Plans. Implementing storm water quality programs that address the six Minimum Control Measures in previously unregulated areas will decrease the pollutant loading to the receiving waters and improve water quality.
29. Following public notice in accordance with State and federal laws and regulations, SWRCB, in public hearings on December 2, 2002 and April 30, 2003, heard and considered all comments. SWRCB has prepared written responses to all significant comments.
30. This action to adopt an NPDES Permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 21100, et seq.) in accordance with section 13389 of the Porter-Cologne Water Quality Control Act (Porter-Cologne) (Division 7 of the California Water Code).
31. This NPDES Permit is in compliance with Part 402 of CWA and shall take effect 100 days after adoption by SWRCB. Once in effect, RWQCBs shall enforce the provisions herein.

IT IS HEREBY ORDERED that operators of Small MS4s subject to this General Permit shall comply with the following:

A. APPLICATION REQUIREMENTS

1. Deadlines for Application

- a. By July 29, 2003, all Permittees automatically designated (see Attachment 1) must either apply for coverage under this General Permit (either individually or as a co-permittee), submit an application for an individual or alternative general Small MS4 permit (if applicable), or submit a joint application for modification of an existing large or medium MS4 permit (40 CFR §122.33(c)(1)).

Permittees that submitted complete application packages prior to the adoption of this General Permit to meet the federal regulation March 10, 2003 deadline have complied with this requirement and are not required to submit a duplicate application package.

- b. By October 27, 2003, traditional Small MS4s designated according to Finding 10 (see Attachment 2), must either apply for coverage under this General Permit (either individually or as a co-permittee), submit an application for an individual or alternative general Small MS4 permit, or submit a joint application for modification of an existing large or medium MS4 permit (40 CFR §122.33(c)(2)). Written notices will be sent to designated parties subsequent to adoption of this General Permit.
- c. Non-traditional Small MS4s, or other Small MS4s, which are designated by RWQCB or SWRCB after adoption of this General Permit must apply for coverage under this General Permit (either individually or as a co-permittee), submit a complete application for an individual or alternative general Small MS4 permit, or submit a joint application for modification of an existing large or medium MS4 permit (40 CFR §122.33(c)(2)). Applications must be submitted within 180 days of designation unless a later date is provided in the designation letter.

2. General Permit Application

To obtain coverage under this General Permit, submit to the appropriate RWQCB a completed NOI (Attachment 7), a SWMP (one hard copy and one electronic copy in Word or PDF format), and appropriate fee. SWMP shall meet all the requirements of Section D of this General Permit. Permittees relying entirely on SIEs pursuant to Provision D.6 and permitted under the NPDES program are not required to submit a SWMP.

3. General Permit Coverage

Permit coverage will be in effect upon the completion of the following:

- a. The Permittee has submitted a complete permit application to the appropriate RWQCB,
- b. Receipt of a complete application is noticed for a minimum of 30 days and copies provided to the public for review and comment upon request,
- c. The proposed SWMP has been reviewed by RWQCB staff, and
- d. SWMP has been approved by the RWQCB Executive Officer, or approved by RWQCB in a public hearing, if requested.

B. DISCHARGE PROHIBITIONS

1. Discharges of waste that are prohibited by Statewide Water Quality Control Plans or applicable Regional Water Quality Control Plans (Basin Plans) are prohibited.
2. Discharges from the MS4s regulated under this General Permit that cause or threaten to cause nuisance are prohibited.
3. Discharges of material other than storm water to waters of the U.S. or another permitted MS4 must be effectively prohibited, except as allowed under Provision D.2.c, or as otherwise authorized by a separate NPDES permit.

C. EFFLUENT LIMITATIONS

1. Permittees must implement BMPs that reduce pollutants in storm water to the technology-based standard of MEP.
2. Storm water discharges regulated by this General Permit shall not contain a hazardous substance in amounts equal to or in excess of a reportable quantity listed in 40 CFR Part 117 or 40 CFR Part 302.

D. STORM WATER MANAGEMENT PROGRAM REQUIREMENTS

The Permittee shall maintain, implement, and enforce an effective SWMP, and develop adequate legal authority to implement and enforce the SWMP, designed to reduce the discharge of pollutants from the permitted MS4 to MEP and to protect water quality. SWMP shall serve as the framework for identification, assignment, and implementation of control measures/BMPs. The Permittee shall implement SWMP and shall subsequently demonstrate its effectiveness and provide for necessary and appropriate revisions, modifications, and improvements to reduce pollutants in storm water discharges to the MEP. SWMP shall be fully implemented by the expiration of this General Permit, or within five years of designation for Small MS4s designated subsequent to Permit adoption, with reasonable progress made towards implementation throughout the term of the General Permit. Existing programs that have storm water quality benefits can be identified in the SWMP and be a part of a Permittee's storm water program.

SWMP shall be revised to incorporate any new or modified BMPs or measurable goals developed through the Permittee's annual reporting process. The Permittee shall incorporate changes required by or acceptable to the RWQCB Executive Officer into applicable annual revisions to SWMP and adhere to its implementation.

1. The Permittee shall maintain, implement, and enforce an effective SWMP designed to reduce the discharge of pollutants from the regulated Small MS4 to the MEP and to protect water quality.
2. SWMP must describe BMPs, and associated measurable goals, that will fulfill the requirements of the following six Minimum Control Measures.

a. **Public Education and Outreach on Storm Water Impacts**

The Permittee must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff. For non-traditional Permittees, the employee/user population may serve as “the public” to target for outreach and involvement.

Non-traditional Small MS4s that discharge into medium and large MS4 may integrate public education and outreach program with the existing MS4 public education and outreach programs.

b. **Public Involvement/Participation**

The Permittee must at a minimum comply with State and local public notice requirements when implementing a public involvement/participation program.

c. **Illicit Discharge Detection and Elimination**

The Permittee must:

- 1) Develop, implement, and enforce a program to detect and eliminate illicit discharges (as defined at 40 CFR §122.26(b)(2)) into the regulated Small MS4;
- 2) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and locations of all waters of the U.S. that receive discharges from those outfalls;
- 3) To the extent allowable under State or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the MS4 and implement appropriate enforcement procedures and actions;
- 4) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the system that are not authorized by a separate NPDES permit;

- 5) Inform public employees, businesses, and the general public of the hazards that are generally associated with illegal discharges and improper disposal of waste; and
- 6) Address the following categories of non-storm water discharges or flows (i.e., authorized non-storm water discharges) only where they are identified as significant contributors of pollutants to the Small MS4:
1. water line flushing;
 2. landscape irrigation;
 3. diverted stream flows;
 4. rising ground waters;
 5. uncontaminated ground water infiltration (as defined at 40 CFR §35.2005(20)) to separate storm sewers;
 6. uncontaminated pumped ground water;
 7. discharges from potable water sources;
 8. foundation drains;
 9. air conditioning condensation;
 10. irrigation water;
 11. springs;
 12. water from crawl space pumps;
 13. footing drains;
 14. lawn watering;
 15. individual residential car washing;
 16. flows from riparian habitats and wetlands; and
 17. dechlorinated swimming pool discharges.

Discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the U.S.

If a RWQCB Executive Officer determines that any individual or class of non-storm water discharge(s) listed above may be a significant source of pollutants to waters of the U.S. or physically interconnected MS4, or poses a threat to water quality standards (beneficial uses), the RWQCB Executive Officer may require the appropriate Permittee(s) to monitor and submit a report and to implement BMPs on the discharge.

d. **Construction Site Storm Water Runoff Control**

The Permittee must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the Small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity

disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. The program must include the development and implementation of, at a minimum:

- 1) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions, or other effective mechanisms, to ensure compliance, to the extent allowable under State, or local law;
- 2) Requirements for construction site operators to implement appropriate erosion and sediment control BMPs;
- 3) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
- 4) Procedures for site plan review which incorporate consideration of potential water quality impacts;
- 5) Procedures for receipt and consideration of information submitted by the public; and
- 6) Procedures for site inspection and enforcement of control measures.

e.

Post-Construction Storm Water Management in New Development and Redevelopment

The Permittee must:

- 1) Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the Small MS4 by ensuring that controls are in place that would prevent or minimize water quality impacts;
- 2) Develop and implement strategies, which include a combination of structural and/or non-structural BMPs appropriate for your community;
- 3) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State or local law. For those Small MS4s described in Supplemental Provision E below, the requirements must at least include the design standards contained in Attachment 4 of this General Permit; and

- 4) Ensure adequate long-term operation and maintenance of BMPs.

The General Permit does not require redesign of school facilities that have been submitted to the Department of General Services, Division of the State Architect before adoption of the permit, and which receive final approval from the Department of Education by December 31, 2004.

f. **Pollution Prevention/Good Housekeeping for Municipal Operations**

The Permittee must:

- 1) Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations; and
- 2) Using training materials that are available from U.S. EPA, the State, or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet building maintenance, new construction and land disturbances, and storm water system maintenance.
3. SWMP must identify the measurable goals for each of the BMPs, including, as appropriate, the months and years for scheduled actions, including interim milestones and the frequency of the action.
4. SWMP must identify the person or persons who will implement or coordinate SWMP, as well as each Minimum Control Measure.
5. Termination of coverage

A Permittee may terminate coverage if a new operator has assumed responsibility for the MS4, the Permittee has ceased operation of the MS4, or the Permittees has eliminated discharges from the MS4. To terminate coverage, the Permittee must submit a written request to the RWQCB.

6. Reliance on a SIE

The Permittee may rely on a SIE to satisfy one or more of the permit obligations, if the separate entity can appropriately and adequately address the storm water issues of the Permittee. The Permittee must describe the arrangement in the SWMP and the arrangement is subject to the approval of the RWQCB Executive Officer. The other entity must agree to implement the control measure(s), or components thereof, to achieve compliance with the General Permit. The

Permittee remains responsible for compliance with this General Permit if the SIE fails to implement the control measure(s).

If the Permittee relies on an SIE to implement all six Minimum Control Measures and the SIE also has a storm water permit issued by SWRCB or RWQCB, the Permittee relying on the SIE must still submit an NOI, appropriate fee, and certification of the arrangement. The Permittee must note this fact in the NOI and provide proof that the SIE has an approved SWMP, but is not required to maintain a SWMP nor submit annual reports.

7. Outfalls not identified in SWMP, but constructed within the permitted area during the term of this General Permit to receiving waters identified in the NOI, shall not be considered a material change in character, location, or volume of the permitted discharge, and shall be allowed under the terms of this General Permit without permit application or permit modification, provided that the following information be provided in the subsequent annual report:

- a. Receiving water name;
- b. Storm sewer system map of added area;
- c. Certification that SWMP shall be amended to include the drainage area.

E. SUPPLEMENTAL PROVISIONS

Those regulated traditional and non-traditional Small MS4s serving a population over 50,000 or that are subject to high growth (at least 25 percent over ten years) must comply with the requirements in Attachment 4 of this General Permit. Compliance is required upon full implementation of the Small MS4s' storm water management plan.

Attachment 5 provides a list of communities that SWRCB anticipates being subject to the provisions in Attachment 4.

F. REPORTING REQUIREMENTS AND MONITORING

1. Reporting

The Permittee must submit annual reports to the appropriate RWQCB by September 15th of each year (for Small MS4s designated with the adoption of this permit, the first annual report is to be submitted in 2004), or as otherwise required by the RWQCB Executive Officer, unless exempted under Provision D.6. The report shall summarize the activities performed throughout the reporting period (July 1 through June 30) and must include:

- a. The status of compliance with permit conditions;

- b. An assessment of the appropriateness and effectiveness of the identified BMPs;
 - c. Status of the identified measurable goals;
 - d. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
 - e. A summary of the storm water activities the Permittee plans to undertake during the next reporting cycle;
 - f. Any proposed change(s) to SWMP along with a justification of why the change(s) are necessary; and
 - g. A change in the person or persons implementing and coordinating SWMP.
2. RWQCB may impose additional monitoring requirements, which may include a reporting component. RWQCBs may adopt such requirements on an individual or group basis.

3. Recordkeeping

The Permittee must keep records required by this General Permit for at least five years or the duration of the General Permit if continued. The RWQCB Executive Officer may specify a longer time for record retention. The Permittee must submit the records to the RWQCB Executive Officer upon request. The Permittee must make the records, including the permit and SWMP, available to the public during regular business hours.

G. RWQCB AUTHORITIES

RWQCBs will review and approve SWMPs prior to permit coverage being in effect and will conduct public hearings of individual permit applications upon request. Where there is no hearing, the Executive Officer may approve the SWMP. RWQCBs will also oversee compliance with this General Permit. Oversight may include, but is not limited to, reviewing reports, requiring modification to SWMPs and other submissions, imposing region-specific monitoring requirements, conducting inspections, taking enforcement actions against violators of this General Permit, and making additional designations of Permittees pursuant with the criteria described in this General Permit and Fact Sheet. The RWQCBs may also issue individual permits to regulated Small MS4s, and alternative general permits to categories of regulated Small MS4s. Upon issuance of such permits by an RWQCB, this General Permit shall no longer regulate the affected Small MS4(s).

H. STANDARD PROVISIONS

1. General Authority

Three of the minimum control measures (illicit discharge detection and elimination, and the two construction-related measures) require enforceable controls on third party activities to ensure successful implementation of the measure. Some non-traditional operators, however, may not have the necessary legal regulatory authority to adopt these enforceable controls. As in the case of local governments that lack such authority, non-traditional MS4s are expected to utilize the authority they do possess and to seek cooperative arrangements.

2. Duty to Comply

The Permittee must comply with all of the conditions of this General Permit. Any permit noncompliance constitutes a violation of CWA and the Porter-Cologne and is grounds for enforcement action and/or removal from General Permit coverage. In the event that the Permittee is removed from coverage under the General Permit, the Permittee will be required to seek coverage under an individual or alternative general permit.

3. General Permit Actions

This General Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a General Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not nullify any General Permit condition.

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this General Permit, this General Permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and Permittee so notified.

4. Noncompliance Reporting

Permittees who cannot certify compliance and/or who have had other instances of noncompliance shall notify the appropriate RWQCB within 30 days. Instances of noncompliance resulting in emergencies (i.e., that endanger human health or the environment) shall be reported orally to the RWQCB within 24 hours from the time the discharger becomes aware of the circumstance and in writing to the RWQCB within five days of the occurrence. The notification shall identify the

noncompliance event and an initial assessment of any impact caused by the event, describe the actions necessary to achieve compliance, and include a time schedule indicating when compliance will be achieved. The time schedule and corrective measures are subject to modification by the RWQCB Executive Officer.

5. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this General Permit.

6. Duty to Mitigate

The Permittee shall take all responsible steps to minimize or prevent any discharge in violation of this General Permit that has a reasonable likelihood of adversely affecting human health or the environment.

7. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this General Permit and with the requirements of SWMP. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance may require the operation of backup or auxiliary facilities or similar systems installed by the Permittee when necessary to achieve compliance with the conditions of this General Permit.

8. Property Rights

This General Permit does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor does it authorize any infringement of federal, State, or local laws or regulations.

9. Duty to Provide Information

The Permittee shall furnish RWQCB, SWRCB, or U.S. EPA, during normal business hours, any requested information to determine compliance with this General Permit. The Permittee shall also furnish, upon request, copies of records required to be kept by this General Permit.

10. Inspection and Entry

The Permittee shall allow RWQCB, SWRCB, U.S. EPA, or an authorized representative of RWQCB, SWRCB, or U.S. EPA, upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the Permittee's premises during normal business hours where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this General Permit;
- b. Access and copy, during normal business hours, any records that must be kept under the conditions of this General Permit within a reasonable time from notification;
- c. Inspect during normal business hours any municipal facilities; and
- d. Sample or monitor at reasonable times for the purpose of assuring General Permit compliance.

11. Signatory Requirements

All NOIs, SWMPs, certifications, reports, or other information prepared in accordance with this General Permit submitted to SWRCB or RWQCB shall be signed by either a principal executive officer, ranking elected official, or duly authorized representative. The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of U.S. EPA).

12. Certification

Any person signing documents under Section H.11 above shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

13. Anticipated Noncompliance

The Permittee will give advance notice to the RWQCB and local storm water management agency of any planned changes in the regulated Small MS4 activity that may result in noncompliance with General Permit requirements.

14. Penalties for Falsification of Reports

Section 309(c)(4) of CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

15. Penalties for Violations of Permit Conditions

- a. Part 309 of CWA provides significant penalties for any person who violates a permit condition implementing Parts 301, 302, 306, 307, 308, 318, or 405 of CWA or any permit condition or limitation implementing any such section in a permit issued under Part 402. Any person who violates any permit condition of this General Permit is subject to a civil penalty not to exceed \$27,500 per calendar day of such violation, as well as any other appropriate sanction provided by Part 309 of CWA.
- b. Porter-Cologne also provides for administrative, civil, and criminal penalties, which in some cases are greater than those under CWA.

16. Oil and Hazardous Substance Liability

Nothing in this General Permit shall be construed to preclude the institution of any legal action against the Permittee or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject to under Part 311 of CWA.

17. Severability

The provisions of this General Permit are severable; and, if any provision of this General Permit or the application of any provision of this General Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

18. Reopener Clause

This General Permit may be modified, revoked and reissued, or terminated for cause due to promulgation of amended regulations, or otherwise in accordance with 40 CFR sections 122.62, 122.63, 122.64, and 124.5.

19. Availability

A copy of this General Permit and SWMP shall be made available for public review.

20. Transfers

This General Permit is not transferable. A Permittee must submit written notification to the appropriate RWQCB to terminate coverage of this General Permit.

21. Continuation of Expired Permit

This General Permit expires five years from the date of adoption. This General Permit continues in force and in effect until a new General Permit is issued or the SWRCB rescinds this General Permit. Only those Small MS4s authorized to discharge under the expiring General Permit are covered by the continued General Permit.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of SWRCB held on_____.

AYE:

NO:

ABSENT:

ABSTAIN

Maureen Marché
Clerk to the Board